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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re A.J. et al., Persons Coming Under
the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

M.R. et al.,

Defendants and Appellants.

C062696

(Super.Ct.Nos.
JD226804 & JD226805)

M.R. (mother) and A.J., Sr. (father),¹ to whom we will refer collectively as appellants, are the parents of An.J. and A.J. (the minors). Appellants appeal from the juvenile court's orders terminating their parental rights (Welf. & Inst. Code, §§ 395,

¹ Father goes by two different names, the initials of which are A.J., Sr., and A.C. The termination order and notice of appeal use the name A.C., but the parties refer to him by his other name, as will we.

366.26; further section references are to this code). They contend the court should have applied the parent-child relationship and sibling relationship exceptions to termination of parental rights, and abused its discretion by denying their request for a bonding study. We shall affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2007, appellants lived with their son, An.J., (born November 2005) and daughter, A.J., (born November 2003) and with father's daughter, Al.J. (born February 1996). While Al.J. was visiting her mom,² she was taken to the hospital because she had blood in her urine and pain in her side. She had sustained injuries consistent with assault: a lacerated right kidney; a pulmonary laceration; a fractured spine; and bruises on her right inner thigh, buttocks, and the bottoms of her feet. Al.J. and the minors were removed from appellants' home in December 2007. Al.J. is not a party to this appeal.

The Sacramento County Department of Health and Human Services (DHHS) filed a juvenile dependency petition in January 2008, alleging jurisdiction under section 300, subdivisions (a) (serious physical harm), (b) (failure to protect) and (j) (abuse of a sibling).

Al.J. related a litany of abuse. Father first abused her in 2005 when he fed her hot sauce for using the phone and then threw her into a shower with scalding hot water. Other times, he would hit her on her palms and the soles of her feet with a bamboo pole

² We refer to Al.J.'s natural mother as "mom" in order to avoid confusion with Al.J.'s stepmother to whom we refer as "mother."

or a wooden back scratcher. He also choked her by placing his hands around her throat and lifting her off of her feet, and subjected her to "hammer time," when he would force her to lie on her back as he stomped her legs and torso with his heel. Mother was present when father became angry with Al.J. and put his hands around her neck until she almost passed out; but mother did nothing to protect the child. On Christmas, father hit Al.J. on her face with his open fist, causing her ear to her chin to become swollen and blue. He repeatedly threatened her, saying that if she told anyone about the abuse, he would give her "dirty whoopings" like those that left her with bruises.

The last incident of abuse started when father got mad at Al.J. for letting A.J. get burned with some soup. Mother hit Al.J. on the face and said, "You F-ing kid." Father kicked Al.J. hard in the right side, like he was kicking a "field goal." She started "urinating blood" and had blood clots "off and on." Father told her she was just having her period. She finally told her mom about the abuse after father yelled at her over the phone for not doing homework on Christmas Eve and Christmas.

Four-year-old A.J. saw father kick Al.J. in the vaginal area, which bled, and over her whole body. A.J. reported that father also screamed at Al.J., as did mother.

Father, a methamphetamine and steroid user, denied the allegations. He claimed Al.J. "is accident prone, she falls off her bike a lot," and had made false allegations before. According to father, he called a doctor after Al.J. started bleeding and was told that it was likely her period.

Mother became very agitated when DHHS placed the minors in protective custody. She referred to Al.J. as "a demon child" and "lying little bitch," and claimed that Al.J. had purposely hurt A.J. Mother, who purported to be unaware of Al.J.'s injuries, said it was not possible that Al.J. was injured while in appellants' care.

Mother and father were arrested for felony child abuse, and father was incarcerated for most of the dependency proceedings.

The juvenile court sustained the dependency petitions in March 2008, and denied reunification services for father (§ 361.5, subd. (b)(6)).

The permanency report in August 2008 noted the following: An.J. had made an excellent adjustment to foster placement, and A.J.'s adjustment had also been good, although she struggled with separation from her parents. Mother had started group therapy for domestic violence in July 2008, had completed parenting classes, and had tested negative for drugs. Her twice-weekly supervised visits went well. Father and mother had a son, K.J., born in April 2008, who lived with mother. She demonstrated good parenting skills with him, and the minors met their new brother on visits. However, mother refused to accept responsibility for not protecting her children and claimed that Al.J. may have inflicted the injuries on herself because she would do anything to get attention. Mother, who was employed and maintained the family home, steadfastly believed the minors should be returned to her; however, if this did not occur, she preferred adoption by the maternal grandmother or grandfather, both of whom lived in Hawaii.

An addendum report in January 2009 stated the minors made an excellent adjustment to their new foster home. The overall quality of mother's visits with the minors was "extremely positive." She regularly brought appropriate meals and snacks along with new clothing and toys, and was extremely affectionate towards the minors. She and A.J. often cried when the visits ended.

The selection and implementation report in May 2009 noted the following: Mother acted appropriately during visitation, structuring activities to make sure the children had a positive experience. The minors hugged and kissed mother at the end of the visits, but they did not cry. An.J. was developing a bond with the foster parents, and A.J. constantly watched over her brother. A.J. missed her mother and maternal grandmother, and looked forward to visits and calls from them. The foster parents were not interested in adoption, but the maternal grandmother expressed interest, which was supported by her former husband, who lived nearby. The maternal grandmother lived in Hawaii, but talked to the minors on the phone once a week and had been part of their lives since birth. The minors had visited her in Hawaii, and she visited them in Sacramento.

At the review hearing, mother's therapist, Pauline LePierrot, testified that she treated mother for about a year, during which mother met the goal of taking personal and parental responsibility, and improved her decision-making skills regarding child protection. LePierrot believed that mother had a better understanding of what was going on in her home and how to not allow bad things to continue. They had discussed substance abuse in the home and how

this could be "problematic" for her children, and mother had learned to look for signs of a propensity for domestic violence in potential partners and achieved a better understanding of how not to allow chaotic relationships to harm her children. When asked if mother felt accountable for any of Al.J.'s injuries, LePierrot stated, "Yes. She mentioned that she cared deeply for the child and that it saddened her that the child had been injured." However, mother continued to say she had never seen the father injure Al.J., and continued to insist that Al.J. did not suffer her broken back while in appellants' home. Mother believed that Al.J. could have been injured elsewhere, such as at her mom's house.

Mother told the juvenile court that she did not know how Al.J. was injured. Upon seeing vaginal bleeding, she called the doctor, who advised seeing a gynecologist because Al.J. had started her period. Mother accused Al.J. of lying about how she was injured so that she could live with her mom. Although mother stated she would not let father have access to the minors if he were released from incarceration, she believed that he did not pose any risk to the minors. Indeed, saying father is "not a monster as if you guys portray him to be," she indicated she would not mind if he had telephone contact with the minors.

A social worker testified that mother had given her various explanations for Al.J.'s injuries--Al.J. made it all up, had dropped a barbell on her abdomen, or had been injured while in the care of her mom.

Finding that mother made some progress regarding avoiding partners with domestic violence or substance abuse problems, but made no progress in understanding that a child in her care was severely injured by father, the juvenile court adopted DHHS's recommendation to terminate reunification services.

Five months after the review hearing, mother asked for a bonding study. The juvenile court deferred ruling on the request until witnesses testified at the section 366.26 hearing.

At the section 366.26 hearing that started in July 2009, the social worker testified about the positive visits mother had with the minors, and the good parenting skills that mother demonstrated. A.J. was sad when the visits ended, and the last two times asked if she could go home with mother. The minors' foster mother testified that the minors got excited before the visits and about their baby brother, and sought to include him in their lives.

Counsel for both parents renewed the request for a bonding study. The court denied it as untimely. The court also denied mother's request for a continuance to file a section 388 petition.

Appellants argued there were two exceptions to termination of parental rights, the parent-child bond as to mother, and the sibling bond as to the minors' baby brother. Finding that the minors' bond with mother was real, but did not justify depriving the minors of the safety and permanency of adoption, the juvenile court terminated parental rights.

DISCUSSION

I

Appellants contend the juvenile court erred by failing to apply either the beneficial parent-child or sibling relationship exceptions to adoption.³ We disagree.

If the court finds by clear and convincing evidence that a minor is likely to be adopted, the court must terminate parental rights and order the minor placed for adoption unless “[t]he court finds a compelling reason for determining that termination would be detrimental” due to one of the statutorily enumerated exceptions. (§ 366.26, subd. (c)(1)(B).) The parent has the burden of establishing an exception to termination of parental rights. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) “Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

If the juvenile court’s ruling declining to find an exception to adoption is supported by substantial evidence, the ruling must be affirmed. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

³ We reject DHHS’s contention that father lacks standing to raise claims relating to the minors’ bond with mother; a parent generally has standing to raise an exception to adoption as the permanent plan. (See *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948 [parent has standing to raise sibling bond exception on appeal].)

We must consider the evidence in the light most favorable to the ruling, giving it the benefit of every reasonable inference and resolving all conflicts in support of the order. (*Ibid.*)

Section 366.26, subdivision (c)(1)(B)(i), sets forth an exception to adoption when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." But a parent may not claim this exception "simply by demonstrating some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349.) The benefit to the child must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Mother maintained an excellent relationship with the minors throughout the dependency. However, the minors had adjusted very well to foster care, including the change to their new foster home. County counsel's respondent's brief correctly points out: "Evidence in the record supports the juvenile court's conclusion that the

[minors] would not suffer significant harm if parental rights were terminated. The children are young. They were removed at ages two and four. At the time of the section 366.26 selection and implementation hearing, they were three years old and five years old. The vast majority of their childhood lies ahead of them. Although bonded with Mother, the time spent in Mother's care was relatively short. They are well adjusted, pleasant children who had adjusted readily to out of home placement. [A.J.] was doing well both . . . academically and socially in kindergarten. It was reported by the foster mother that after visitation the children would be sad for five minutes and then quickly become occupied with what they would be doing next. [¶] At the most recent visit [observed by a social worker] prior to the section 366.26 hearing . . . , the social worker reported that at the end of the visit the children hugged and kissed Mother and said goodbye, but they did not cry when they left the visit. The evidence supported the inference that if the children were never to see Mother again . . . they would not be substantially harmed. Rather, they are resilient children who would be able to move on and be happy in their new, adoptive home."

Having reviewed the entire record, we are satisfied that the juvenile court reasonably could conclude the minors would not be significantly harmed by the severing of their bond with mother, who, despite overwhelming evidence of horrific abuse by father, some of which was done in the presence of mother and one of the minors, denied his culpability throughout the dependency. Based on mother's willingness to side with the abuser and to place blame on

the young victim, whom mother accused of being a "sick lying demon child" and "F-ing kid" whom mother "can't stand," the court was justified in concluding that stability and permanence in an adoptive home was of paramount importance to the well-being of the minors.

Appellants urge application of the exception to adoption that applies when termination of parental rights will result in a "substantial interference with a child's sibling relationship" (§ 366.26, subd. (c)(1)(B)(v).)

In evaluating whether this exception applies, the juvenile court "tak[es] into consideration the nature and extent of the [sibling] relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).) The sibling exception "applies only when adoption would result in 'substantial interference with a child's sibling relationship.' [Citation.]" (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 293.)

Here, the maternal grandmother lives in Hawaii, but this has not prevented her from being a part of the minors' lives or from visiting them in Sacramento. The minors' relationship with their brother may become more attenuated if they move to Hawaii, but terminating parental rights should not end it. Mother's assertion that the relationship is not guaranteed to continue after adoption is speculation and contrary to the maternal grandmother's behavior.

Furthermore, substantial interference with the sibling relationship does not decide the question.

"If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [Citation.]" (*In re L.Y.L., supra*, 101 Cal.App.4th at p. 952.) Although the minors love their young brother, they have never lived with him; and the juvenile court reasonably could find they would not be harmed by being separated from him. In other words, the court could reasonably conclude the sibling relationship did not outweigh the benefits of adoption.

II

We reject appellants' contention that the juvenile court erred in failing to order a bonding assessment.

The juvenile court has broad discretion whether to order a bonding assessment. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339-1340; *In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Thus, the question on review is "whether, under all the evidence viewed in a light most favorable to the juvenile court's action, the juvenile court could have reasonably refrained from ordering a bonding study." (*In re Lorenzo C., supra*, 54 Cal.App.4th at p. 1341.)

"The kind of parent-child bond the court may rely on to avoid termination of parental rights . . . does not arise in the short period between the termination of services and the section 366.26 hearing." (*In re Richard C., supra*, 68 Cal.App.4th at p. 1196.)

When the juvenile court makes a determination of the nature and quality of the parent-child bond, the child generally has been in the dependency process for a significant period of time, and the characteristics of the bond should be apparent. (*Ibid.*)

Appellants place considerable reliance on the timeline of requests for a bonding study. Mother's counsel asked for a bonding study on July 2, 2009, after evidence was submitted in the review hearing. The juvenile court declined to rule on the matter, telling appellants to wait until after evidence was presented at the section 366.26 hearing. When counsel renewed the request after evidence was presented at the section 366.26 hearing on July 27, 2009, the court denied the request as untimely.

Appellants argue the minors' bond with mother was not truly evident until after the testimony of the social worker and the foster mother at the section 366.26 hearing. Since the process of evaluating whether the minors could be transferred to Hawaii had not started until late May or June 2009, appellants claim a bonding study would not have delayed proceedings.

Mother's services were terminated in January 2009, almost five months before she first asked for a bonding study, and the juvenile court had ample evidence of mother's bond to the minors, which was detailed in DHHS's reports and in the testimony of the social worker and the foster mother. Thus, it was well within the

court's discretion to deny the request for a bonding study at such a late stage in the proceedings.

DISPOSITION

The orders of the juvenile court are affirmed.

SCOTLAND, P. J.

We concur:

SIMS, J.

BUTZ, J.